IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 109 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT FLUOROCHEMICALS LTD. THRO'ITS COMPANY SECRETARY

Versus

UNIVERSAL SERVICES

Appearance:

MR JITENDRA MALKAN for Petitioner

MR TARESH J BHATTJI for Respondent No. 1

MR BY MANKAD APP for Respondent No. 2

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 26/12/2000

ORAL JUDGEMENT

The original complainant of Criminal Case No. 483 of 1998 which was pending on the file of the learned Chief Judicial Magistrate, Vadodara (who will be referred to hereinafter as the learned Magistrate) has by filing

this Criminal Revision Application under Sec. 397 of the Criminal Procedure Code, 1973 (for short the "Cr.P.C.), challenged correctness, legality and propriety of judgment Ex.8 dt. 15/1/2000 rendered by the learned Additional Sessions Judge, Vadodara in Criminal Revision Application No. 197 of 1999.

2. Here in this Criminal Revision Application, the revision petitioner was a complainant, whereas the revision opponent no.1 was an accused in Criminal Case No. 483 of 1998, and therefore, parties will be referred to as the complainant and accused respectively at appropriate places.

3. The facts leading to this present Criminal Revision Application in a nutshell are as follows :-

The original complainant lodged his complaint against accused on or about 16/2/1998. As per that complaint, accused had issued three cheques each of an amount of Rs. 1 Lac dt. 30th August, 1997 drawn on Bank of Maharashtra, DEO Nagar Branch, Nagpur. That three cheques were issued in favour of complainant. The complainant presented that cheques for realisation in that Bank. The cheques were returned unpaid by the bankers on 7/1/1998 with remarks "Exceeds Arrangements". On inquiry, it was noticed that there was no sufficient funds in the account of the accused to honour the said cheques. Thereafter, complainant served a legal notice on accused by registered Post A.D. on 21/1/1998. It was received by accused on 28/1/1998. Till the date of filing complaint, accused failed and neglected to make the payment of cheques, and therefore, on or about 16/2/1998, the complainant lodged the complaint against accused for the offence punishable under Sec. 138 of the Negotiable Instruments Act.

4. During pendency of aforesaid case, the accused submitted one application Ex.19 on 14/6/1999 with a request to discharge them from the case. The learned Chief Judicial Magistrate, after hearing the arguments of both the parties, passed an order dt. 27/9/1999. By that order, the learned Magistrate was pleased to dismiss the said application for discharge from the case.

5. Being aggrieved against and dissatisfied with the said order dt. 27/9/1999 passed below application Ex.19, the original accused preferred Criminal Revision Application No. 197 of 1999 to the Sessions Court, Vadodara. The learned Additional Sessions Judge, Vadodara, after hearing the arguments of learned advocates for both the parties and on going through

Records and Proceedings of the case, rendered judgment Ex.8 on 15/1/2000 by which Criminal Revision Application preferred by the original accused was allowed and order below Ex.19 was set aside, and it was further ordered that proceedings initiated against accused be stopped.

6. Being aggrieved against and dissatisfied with the said judgment Ex.8 dt. 15/1/2000 rendered by the learned Additional Sessions Judge, Vadodara in Criminal Revision Application No. 197 of 1999, the original complainant has preferred this present Criminal Revision Application.

7. When this Criminal Revision Application was taken up for final hearing, the learned advocates for both the parties jointly submitted that judgment Ex.8 dt. 15/1/2000 rendered by the learned Additional Sessions Judge, Vadodara be set aside without assigning any reasons in the order of this Court.

8. Having heard the learned advocates for both the parties and on going through the impugned judgment which is challenged in this Criminal Revision Application and also after taking into consideration the grounds taken in memo of this Criminal Revision Application, this Court is of the view that judgment Ex.8 is required to be set aside in view of what is held by Division Bench of Hon'ble Supreme Court in case of K.BHASKARAN vs. SANKARAN VAIDHYAN BALAN AND ANOTHER, reported in (1999) 7 SUPREME COURT CASES, 510.

9. In view of what is stated hereinabove, this Criminal Revision Application deserves to be allowed and accordingly it is allowed. Judgment Ex.8 dt. 15/1/2000 rendered by the learned Additional Sessions Judge, Vadodara in Criminal Revision Application No. 197 of 1999 is set aside and the order dt. 27/9/1999 passed below application Ex.19 in Criminal Case No. 483 of 1998 passed by the learned Chief Judicial Magistrate, Vadodara is restored. The learned Chief Judicial Magistrate, Vadodara is directed to dispose of the case without being influenced by the order of this Court. Rule is made absolute accordingly.

Date: 26/12/2000. (H.H.MEHTA,J.)
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